The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte DEBORA RINKEVICH and JOHN MICHAEL GARRISON

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Appeal 2007-1317
Application 09/731,623
Technology Center 2100

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Decided: May 29, 2007

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Before JAMES D. THOMAS, ANITA PELLMAN GROSS, and
ST. JOHN COURTENAY III, *Administrative Patent Judges.*

COURTENAY, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-6, 8-14, 16-22, and 24. The Examiner has reconsidered and withdrawn the rejection of claims 7, 15, and 23 (Answer 7). The Examiner has also reconsidered and withdrawn the rejection under 35 U.S.C. § 112, first paragraph, of claims 6, 14, and 22 (Answer 3). With

respect to the rejection of dependent claim 11, the Examiner has indicated on page 11 of the Answer that the rejection of claim 11 has been reconsidered and withdrawn. However, on pages 4 and 6 of the Answer we find the Examiner nevertheless maintains a rejection for claim 11 as being unpatentable over Savill in view of Wu. In order to avoid unnecessary delay and expedite the prosecution of this appeal, we will consider claim 11 as standing rejected as set forth on pages 4 and 6 of the Answer. We note that Appellants address the Examiner's rejection of claims 1-24 in the Brief and there is no Reply Brief.

THE INVENTION

The disclosed invention relates generally to data processing systems, and more particularly, to user authentication and access in a data processing system (Specification 1). The disclosed invention provides a system and method for aggregating authenticated identities. A security context created in response to a first user logon is saved in response to a second logon. A composite or aggregate security context is created based on the identity passed in the second logon. Access may then be granted (or denied) based on the current, aggregated security context. Upon logout of the user based on the second identity, the aggregate security context is destroyed, and the security context reverts to the context previously saved. Alternatively, in another embodiment, all security contexts, including those on the stack, may be destroyed (Specification 8).

Independent claim 1 is illustrative:

1. An authentication method comprising the steps of:
    generating a first security context in response to a first user authentication;
    generating a second security context in response to a second user authentication, wherein said second security context is an aggregate of said first security context and a security context corresponding to an identity in said second user authentication.

THE REFERENCES

The Examiner relies upon the following references as evidence of unpatentability:

Wu   US 5,774,551   Jun. 30, 1998

John Savill, "Where can I find a Unix SU (substitute user) like utility?" InstantDoc #15120, Dec. 10, 1999.

THE REJECTION

The following rejection is on appeal before us:

1. Claims 1-6, 8-14, 16-22, and 24 stand rejected under

    35 U.S.C. § 103(a) as being unpatentable over the teachings of

    Savill in view of Wu.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for the respective details thereof.

OPINION

Only those arguments actually made by Appellants have been considered in this decision. It is our view, after consideration of the record

before us, that the evidence relied upon does not support the Examiner's rejection of the claims on appeal. Accordingly, we reverse.

Independent claim 1

We consider first the Examiner's rejection of independent claim 1 as being unpatentable over Savill in view of Wu.

Appellants argue that Wu's stacking (i.e., aggregation) of authentication services is not done *in response to a second user authentication*, but rather is preexisting and independent of any actual user authentication action (emphasis in original). Appellants further argue that Wu expressly teaches away from a second user authentication, or of performing any action in response to such (missing) second user authentication, by its teaching of a unified single user logon. Appellants conclude that the Examiner has impermissibly relied upon hindsight in formulating the rejection (Br. 9).

The Examiner disagrees. The Examiner argues that Wu's unified login does include the second user authentication because: (a), the first and the second user authentications in the authentication security system, as recited in the claim, *are not limited to human entry* (which is also consistent with the Specification at page 10, paragraph 2 and page 13, paragraph 4), and (b), Wu's unified login invokes multiple logical authentication services and associated security contexts (or credentials) that are dynamically built and aggregated during run-time. The Examiner argues that by using Wu's "stacking" authentication services (col. 6, 1. 65), the security contexts are aggregated depending upon which authentications are invoked and what

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credentials are created during run-time. Therefore, the Examiner concludes that Wu does not teach away from a second user authentication by its teaching of a unified single user login (Answer 8-9).

With respect to the issue of hindsight, the Examiner asserts that an artisan would have been motivated to modify Savill with the teachings of Wu by virtue of the nature of the problem to be solved. Specifically, the Examiner argues that Wu resolves the problem presented by Savill, i.e., how to avoid the need to log off an existing user account prior to logging on to a new user account (Savill, p. 1, l. 4).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). "[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, "'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

We begin our analysis by broadly but reasonably construing the recited term "user authentication" in a manner consistent with the Specification (claim 1). *See In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000) ("[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification."). When we look to the Specification for *context*, we agree with the Examiner that the claimed first and the second user authentications are not limited to authentication actually performed by human entry (i.e., performed by the user). Indeed, we find the Specification provides broad support for operations that require no action on the part of a human operator:

> Note that the invention may describe terms such as comparing, validating, selecting, identifying, or other terms that could be associated with a human operator. However, for at least a number of the operations described herein which form part of at least one of the embodiments, no action by a human operator is desirable.
> (Specification 10, ll. 10-13).

> In this way an authentication mechanism is implemented which permits a user to selectively authenticate without necessarily giving up already established access. (Note that a user need not refer to a "human" user but may, for example, include a proxy server running under a user's identity.)
> (Specification p. 13, l. 21 - p. 14, l. 1).

We further agree with the Examiner that Wu teaches multiple logical authentication services that are aggregated (i.e., stacked) so as to permit a single unified login to access multiple authentication services, as follows:

> The ability to use multiple different ones of a given account management service is called *"stacking,"* and it is particularly

> useful in conjunction with the *authentication services*. The
> configuration file 127 allows *multiple authentication services
> 109* to be *stacked* for *authenticating a user*, and further enables
> *unified login* to such *stacked authentication services 109* with a
> *single password*, and *unified logout* with *a single logout
> command* [emphasis added].

(Wu, col. 6, l. 63 - col. 7, l. 4).

Nevertheless, we note that Appellants specifically point out that Wu's
stacking of authentication services is not done *in response to* a second user
authentication (*see* Br. 9). Appellants further argue that Wu's stacking (i.e.,
aggregation) of authentication services is *preexisting* and independent of any
actual user authentication action (*id.*). We find the issue before us presents a
close question, given that the broad language of the claim does not require
actual human authentication. Thus, we disagree with Appellants' sweeping
assertion that Wu's stacking (i.e., aggregation) of authentication services *is
independent of any actual user authentication action*, because user action by
a *human* is not required when the language of the claim is accorded a broad
but reasonable interpretation consistent with the Specification, as discussed
supra (*see* Br. 9). However, after closely examining the Wu reference in its
entirety, we nevertheless find clear support for Appellants' position that
Wu's stacking (i.e., aggregation) of authentication services is *preexisting*
(i.e., prestored). Specifically, we find Wu discloses that the stacking (i.e.,
aggregation) of service associations (i.e., authentication services) is stored in
configuration file 127:

> Generally, the configuration file 127 stores a set of service
> associations. Each service association relates one system entry
> service 107 with one or more selected account management

services. The selected account management services may be of
the same type, or from various types. The service associations
form a decision table [*see* TABLE 1, col. 7] used by the
pluggable account management interface 123 to determine
which account management service is to be used [to] provide
account management functionality in response to the use of a
particular system entry service 107.
(Wu, col. 7, ll. 5-14; *see also* TABLE 1, col. 7].

Therefore, we agree with Appellants that Wu's preexisting, stored
service associations (i.e., authentication services) are not fairly *generated*
(i.e., created) as a second security context *in response to* a second user
authentication, wherein said second security context is an aggregate of said
first security context and a security context corresponding to an identity in
said second user authentication, as required by the language of independent
claim 1.

With respect to Appellants' teaching away argument, we agree that
Wu's primary purpose of providing a *unified single user login* does teach
away from any requirement that a second user authentication be performed
by a *human* user (*see* Wu, col. 3, ll. 14-17). At the same time, we agree with
the Examiner that a broad but reasonable interpretation of the claim
language does not require the user authentication to be performed by an
actual human user, as discussed *supra* .

However, we find Appellants' arguments persuasive with respect to
the issue of hindsight. The Examiner asserts that the *nature of the problem
to be solved* would have led an artisan, having knowledge of Savill, to look
to Wu to solve the purported deficiencies of Savill (*see* Answer 9-10). The
problem or deficiency that the Examiner raises is the need to avoid logging

out before logging on to another session (*see* Answer 10, ¶ 1). The Examiner asserts that Wu solves this problem (*id.*). When we look to the primary Savill reference, we find the single-page reference teaches a Microsoft Windows super-user (SU) utility that allows a system administrator to temporarily start applications running in the security context of a different account *without having to first close all open applications and log off* (Savill, ¶ 1). Thus, we find the problem proffered by the Examiner is already solved by Savill. We note that the U.S. Supreme Court recently reaffirmed that "[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon *ex post* reasoning." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d at 1397. *See also Graham v. John Deere Co.*, 383 U.S. at 36, 148 USPQ at 474. Nevertheless, in *KSR* the Supreme Court also qualified the issue of hindsight by stating that "[r]igid preventative rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d at 1397. In the instant case, we conclude that a person of ordinary skill in the art *having common sense* at the time of the invention would not have reasonably looked to Wu to solve a problem already solved by Savill. Therefore, we agree with Appellants that the Examiner has impermissibly used the instant claims as a guide or roadmap in formulating the rejection.

For at least the aforementioned reasons, we agree with Appellants that the Examiner has failed to meet the burden of presenting a prima facie case

of obviousness. Accordingly, we will reverse the Examiner's rejection of independent claim 1 as being unpatentable over Savill in view of Wu.

Because independent claims 9 and 17 recite equivalent limitations, we will also reverse the Examiner's rejection of these claims as being unpatentable over Savill in view of Wu for the same reasons discussed *supra* with respect to claim 1. Because we have reversed the Examiner's rejection of each independent claim, we will not sustain the Examiner's rejection of any dependent claims under appeal. Therefore, we also reverse the Examiner's rejection of dependent claims 2-6, 8, 10-14, 16, 18-22 and 24 as being unpatentable over Savill in view of Wu.

DECISION

In summary, we will not sustain the Examiner's rejection of any claims under appeal. Therefore, the decision of the Examiner rejecting claims 1-6, 8-14, 16-22, and 24 is reversed.

REVERSED

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